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No. 88-1029

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

YONKERS RACING CORPORATION,
Petitioner,

v.

CITY OF YONKERS,
UNITED STATES OF AMERICA, and
YONKERS BRANCH—NAACP,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF OF RESPONDENT CITY OF YONKERS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the courts below erred in issuing an injunction pursuant to the All Writs Act, 28 U.S.C. § 1651, in effect requiring a condemnation proceeding to be removed from state court to federal court in order to facilitate implementation of a consent decree in a pending federal court desegregation case.

2. Whether the courts below erred in holding that petitioner's state law defenses to the condemnation proceeding were without merit.

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BRIEF OF RESPONDENT CITY OF YONKERS IN OPPOSITION

The City of Yonkers (the "City") hereby opposes the petition for a writ of certiorari filed by the Yonkers Racing Corporation in this case.

STATEMENT

The petition in this case grows out of an action instituted by the United States against the City, and others, in the United States District Court for the Southern District of New York on December 1, 1980. That action,

which alleged violations of the Fourteenth Amendment to the United States Constitution, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3604(a) (the Fair Housing Act), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6, sought an injunction requiring, *inter alia*, the adoption of a housing remedy plan locating public and subsidized housing throughout the City. The Yonkers Branch—National Association for the Advancement of Colored People was permitted to intervene as a party plaintiff. See *City of Yonkers* v. *United States*, No. 87-1686, Petition for Certiorari, ii (April 12, 1988), (hereinafter "*Yonkers I*").[1]

On November 20, 1985, the district court issued a liability opinion (*Yonkers I* App., 125) holding that the City had violated the Equal Protection Clause of the Fourteenth Amendment and the Fair Housing Act in its selection of sites for public and subsidized housing. The district court subsequently issued a series of remedial orders, including a Housing Remedy Order which required that 200 units of public housing be built on the east side of Yonkers. See *Yonkers I* App., 755. On December 28, 1987, the Second Circuit affirmed the judgment of the district court "in all respects" (*Yonkers I* App., 122) and this Court subsequently denied the City's petition for a writ of certiorari. 108 S.Ct. 2821 (June 13, 1988).

1. Following the Second Circuit's affirmance of the judgment against the City, the Yonkers City Council approved a remedial consent decree setting forth the actions that the City would take "in connection with [the] consensual implementation" of the Housing Remedy Order. See *City of Yonkers v. United States*, Petition for Cer-

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[1] The case also involved issues of school desegregation which are not relevant to this petition. *See Yonkers I* Pet. 11-18 (April 12, 1988).

tiorari, No. 88-855 (November 23, 1988), App., 33 (hereinafter *"Yonkers II"*). In the consent decree, the City "acknowledge[d] its continuing commitment to the construction of the 200 units of public housing" and agreed to construct 200 units of housing on seven sites specifically identified in the decree. *Yonkers II* App., 33-34. One of the seven sites identified in the consent decree was a parking lot (the "Raceway" site) owned by the petitioner. *Yonkers II* App., 34.[2]

Because the sites selected for public housing included four privately owned properties, the City agreed to make "fair market value offers to purchase from their respective owners such private sites as are set forth" in the decree. *Yonkers II* App., 35. The City further agreed that

> in the absence of voluntary agreement for the purchase by (or on behalf of) the City, the City will commence (or will cause to be commenced) legal proceedings to secure control over the relevant site in the most expeditious manner, including the use of the power of eminent domain.

Id. The petitioner rejected the City's offer to purchase the property and, on April 21, 1988, the City commenced a condemnation proceeding against the Raceway property in the Supreme Court of the State of New York, Westchester County.

On May 19, 1988, after answering the petition for condemnation and raising certain affirmative defenses, petitioner commenced a parallel proceeding (the "Article 78 proceeding") pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR) in the same court, seeking to enjoin the condemnation proceeding on various

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[2] Under the consent decree, the Raceway site—which was designated the "Clark Street" site in the consent decree—would become the location of 20 of the 200 units of public housing to be constructed by the City on the east side. *Yonkers II* App., 34.

grounds.[3] In the Article 78 proceeding, petitioner argued that: (1) the City failed to comply with the notice and hearing requirements of the New York Eminent Domain Procedure Law ("EDPL"); and (2) the City failed to conduct the environmental review required by the New York State Environmental Quality Review Act ("SEQRA").[4]

2. On May 27, 1988, the district court granted the United States' "Application to Show Cause Why The City of Yonkers Should Not Be Required To Petition, Pursuant to 28 U.S.C. § 1441, For Removal of Pending New York State Court Proceedings To Federal Court." On the same day, the court, over the objections of the City and the petitioner, ordered the City to file a petition to remove the Article 78 proceeding to federal court, so that it would be part of the underlying desegregation action. The district court then granted the United States and the NAACP permission to intervene in the Article 78 proceeding in that court.

Following removal, petitioner filed a motion with the district court to remand the Article 78 proceeding to the state court on the ground that the federal court lacked jurisdiction. On June 8, the district court heard argu-

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[3] On the same date, St. Joseph's Seminary, the owner of another property that was being condemned pursuant to the consent decree, also filed an Article 78 proceeding to enjoin the condemnation. Pet. App., 8. The Seminary raised the same defenses as petitioner and also claimed that the condemnation proceedings violated its First Amendment right to the free exercise of religion. *Id.* at 4. The Second Circuit reversed and remanded on the Seminary's First Amendment claim (*id.* at 35), and that issue is not before the Court.

[4] The claims raised in the Article 78 proceeding were essentially identical to the affirmative defenses raised in the separate condemnation proceeding. As the Second Circuit noted, "the Article 78 proceedings were merely state law procedural vehicles for raising defenses to the condemnation petitions." Pet. App. 12 (citations omitted).

ment on both the jurisdictional issue and on the merits of the Article 78 proceeding. On the jurisdictional question, the district court reaffirmed its earlier holding that "removal of these actions was proper pursuant to the All Writs Act, 28 U.S.C. § 1651, and [the] federal removal statutes." Pet. App. 52.

The district court's discussion of its authority to compel "removal" of the condemnation action is contained in its ruling from the bench on the removal petition. First, the court noted that there is a "close" relationship between the Article 78 proceeding and the underlying litigation. Second, the court stated that resolution of the state law questions presented by the Article 78 petition would be a "horrendous" burden on the state court. Finally, the court stated that the "prospect of inconsistent decrees" is "fully applicable here." Pet. App. 44. Thus, "removal of the Yonkers Racing Corporation action was proper pursuant to [the Civil Rights Removal Act,] 28 U.S.C. § 1443." Pet. App. 52, n.1. Accordingly, the court exercised its authority over the Article 78 proceeding, while the parallel "condemnation proceeding initiated in the Supreme Court pursuant to the consent decree continues in that court." Pet. App. 44.

On the merits of the petitioner's state law defenses, which the City vigorously disputed, the district court first addressed petitioner's claim that the City failed to comply with the notice and hearing requirements of the eminent domain procedure law. On that defense, the court held that

> there exists either exemption from such notice, hearing and review provisions under State law or that there has been such substantial compliance with the purposes of such notice and review provisions that State policy must give way when it operates to prevent the vindication of Constitutional guarantees.

Pet. App. 53. With respect to petitioner's argument that the City failed to conduct the environmental review required by SEQRA, the court noted that "the purpose of this State law is that there be a meticulous inquiry into all appropriate factors that will impact on a community before the taking of certain actions should be allowed." *Id.* at 54. Because "[s]uch an inquiry has . . . been conducted here" and because "SEQRA regulations . . . exempt[] these actions . . . from the requirements of that State law," the court dismissed petitioner's argument under SEQRA. *Id.* Thus, having disposed of petitioner's defenses, the district court concluded that "the City of Yonkers' [condemnation] petition . . . should be granted and the eminent domain proceedings shall go forward in accordance with State law in order to determine the sole remaining issue of valuation of . . . the Raceway propert[y]." Pet. App. 57.[5]

3. A panel of the Second Circuit affirmed, with Judge Mahoney dissenting.[6] With respect to the jurisdictional

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[5] At the close of the hearing, the district court made clear that its order was intended essentially to relieve the state court of authority to rule on the state law defenses in the condemnation proceeding. The court asked the United States and the NAACP to prepare

> an order which embodies these findings and which will also serve the purpose . . . of making clear to a [New York State] Supreme Court justice that the petition for condemnation should be accepted, since the only substantive grounds for objection to its acceptance have been fully litigated and resolved in this court, and that [which] is to go forward in state court are matters relating to value and no other matters.

Pet. App. 50; *see* Pet. App. 56-57 (district court order requiring petitioner to "serve on the State court in the pending eminent domain proceeding against [its] propert[y] a copy of this Order and present to such Court a proposed order stating that . . . all substantive grounds for objection to the proceedings in question have been fully litigated and resolved in this Court").

[6] In the Second Circuit, the City "continue[d] to doubt that there is any substantial basis for the exercise of authority by the

issue, the majority first noted that the authority to remove state actions to federal court is granted (in both 28 U.S.C. § 1441(a) and 28 U.S.C. § 1443(2)) only to *defendants*.[7] Because the City of Yonkers—as the party initiating the condemnation proceeding—could be viewed as a party "in the position of a plaintiff," the majority stated that it had "serious doubts . . . whether the removal statutes provided a proper basis to compel the City of Yonkers to remove the Article 78 proceedings to federal court." Pet. App. 13-14.[8] However, because the

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district court under the All Writs Act." *See Yonkers Racing Corporation* v. *City of Yonkers*, Nos. 88-6140, 88-6146, Consolidated Brief of City of Yonkers, 8 (July 12, 1988)). However, the City also defended its right to proceed with the condemnation, stating that the "district court correctly decided the issues raised in the Article 78 proceedings on the merits." *Id.* Thus, because the City believed it would be "wasteful to require the [state law] matters to be relitigated in the state court[,]" it urged the Second Circuit "to affirm the judgment of the district court."

[7] Section 1441(a) provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the *defendant* . . . ." 28 U.S.C. § 1441(a) (emphasis added). Section 1443(2), the civil rights removal statute, provides that any civil action commenced in state court "for any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it may be inconsistent with such law" may be removed "by the *defendant* . . . ." 28 U.S.C. § 1443(2) (emphasis added).

[8] Petitioner argued that the Article 78 proceedings "were merely state law procedural vehicles" for raising defenses to the condemnation petitions. Pet. App. 12. Thus, when the state proceedings were viewed as a whole, the City clearly was the plaintiff. Moreover, petitioner argued that the decisions of this Court mandated that "regardless of the state's procedural provisions, where a party seeks to remove a condemnation proceeding to federal court, the condemnor is the plaintiff and the condemnee is the defendant." Pet. App. 12 (citing *Mason City & Fort Dodge R.R.* v. *Boynton*, 204 U.S. 570, 579-580 (1907); *Chicago, R.I. & Pac. R.R.* v. *Stude*, 346 U.S. 574, 580 (1954)). The United States and the NAACP, by contrast, argued "that the Article 78 actions were

district court "asserted an independent basis for removal jurisdiction under the All Writs Act," the majority concluded that it "need not resolve this difficult question" of interpretation of the removal statutes. *Id.* at 14.

With regard to the All Writs Act (the "Act"), the majority began by noting that the Act provides the district courts with "extraordinary power" (Pet. App. 14) to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *Id.* (*quoting* 28 U.S.C. § 1651(a)). The court rejected petitioner's argument that the grant of general or residual authority in the Act was inapplicable in the circumstances of this case because other federal statutes—the removal statutes—specifically governed the district court's authority when a matter is removed from state to federal court. Pet. App. 15. Moreover, the majority held that the "residual jurisdictional authority" of the Act may be applied against non-parties, such as the petitioner here. Thus, the majority concluded that "because of the significant risk of inconsistent decrees from two courts, it was 'necesary or appropriate' for the district court to invoke the residual jurisdictional authority of the All Writs Act." [9] *Id.* at 19.

On the merits of the Article 78 petitions, the majority agreed with the district court's rationale. The court held first that there was "substantial compliance" with the state law (EDPL) notice and hearing requirements for condemnation proceedings and that "there was a valid

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separate proceedings from the condemnation actions" and that the court should focus on the City's procedural role in the Article 78 action alone and not on the City's overall status in the state court. Pet. App. 12-13.

[9] Neither the majority nor the district court ever specified what "inconsistent" decrees might be entered or how such inconsistencies could "frustrate" the implementation of the Housing Remedy Order. *See* Pet. App. 16.

determination that the proposed condemnations would be in the public interest as required under Article 2 of the EDPL." Pet. App. 22-23. With regard to state environmental review requirements (SEQRA), the court of appeals also "agree[d] with the district court that the proposed condemnation[] of the Raceway . . . sit[e] [is] exempt from compliance with SEQRA." Pet. App. 24. Moreover, in light of the " 'meticulous inquiry' regarding environmental factors," the majority of the panel concluded that the "requirements of SEQRA were satisfied in all respects." *Id.*

Judge Mahoney dissented, stating that the "Article 78 proceedings were improperly removed and should be remanded to state court." Pet. App. 36. At the outset, he noted that the district court clearly did not have authority to order the City to remove the action, because the City was not a "defendant" as required under the removal statute. "[T]he Supreme Court has twice held that whatever labels state law may apply, a condemnee is a defendant for purposes of federal removal statutes." *Id.* at 37.

With respect to the All Writs Act, Judge Mahoney quoted the "basic rule" set forth by this Court in *Pennsylvania Bureau of Correction* v. *United States Marshals Service*, 474 U.S. 34 (1985) that "[w]here a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." Pet. App. 39. "Although [the All Writs] Act empowers federal courts to fashion extraordinary remedies when the need arises, it does not authorize them to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate." *Id.* (*quoting Pennsylvania Bureau of Correction*, 474 U.S. at 43). Thus, because removal was not permitted by the statute that "specifically addresses" the "situation"—that is, the removal statute—use of the All Writs Act was improper absent a showing of "exceptional circum-

stances" that made its use "necessary or appropriate." *Id.* at 39 (*quoting Pennsylvania Bureau of Correction*, 474 U.S. at 42-43).

According to Judge Mahoney, *Pennsylvania Bureau of Correction* makes it "apparent" that the removal "approved by the majority here was not warranted by the All Writs Act." Pet. App. 39. Given the conceded "ability, objectivity, [and] integrity of the state court," and the ability of the NAACP and United States to protect their interests through intervention in the state court proceedings, there were no "exceptional circumstances" that warranted the "preemptive strike" on the state court. *Id.* at 39-40. Moreover, "there was no basis to disregard the 'principles of equity, comity, and federalism; which should govern . . . consideration of this issue." *Id.* at 40 (citations omitted).

DISCUSSION

The courts below erred in holding that the All Writs Act permits a federal court to enjoin "removal" of purely state law claims from a state court in order to achieve expedited and convenient disposition of those claims. However, given the absence of any conflict among the lower courts on this question and the unusual circumstances that gave rise to the issue in this case, there are no "special and important" reasons that warrant granting certiorari on this issue. The other questions presented all involve issues of interpretation of state law which are not worthy of review by this Court. *Huddleston* v. *Dwyer*, 322 U.S. 232, 237 (1944).

1. The All Writs Act, 28 U.S.C. § 1651 provides, in relevant part, that

> all [federal] courts . . . may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Id. Because an injunction issued under the All Writs Act must be "agreeable to the usages and principles of law," 28 U.S.C. § 1651, a federal court issuing such an extraordinary injunction must demonstrate, at a minimum, that the usual predicates for an injunction—including irreparable harm—are satisfied. *Florida Medical Assoc., Inc.* v. *United States Dept. of Health, Educ. & Welfare*, 601 F.2d 199 (5th Cir. 1979).

Moreover, "[a]lthough that Act empowers federal courts to fashion extraordinary remedies when the need arises, it does not authorize them to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate." *Pennsylvania Bureau of Correction*, 474 U.S. at 43. Instead, there must be a showing of "exceptional circumstances" in which the district court's usual remedial and injunctive authority is "clearly" inadequate. *Id.* In this case, there has been no showing sufficient to satisfy normal injunctive standards, much less any showing of "exceptional circumstances" that would "clearly" warrant an "extraordinary remed[y]." See *id.*

The only argument in support of a showing of "irreparable injury" or "exceptional circumstances" to support the issuance of the writ was the suggestion that "removal" of the Article 78 proceeding was "necessary to protect the integrity of the Consent Decree" either from (1) an erroneous decision by the state court on the merits of the state law defenses to the condemnation; or (2) inadequate representation by the City in the state court. See Pet. App. 17-18.[10] On the first point, the "ability,

[10] The reference by the courts below to the "risk of inconsistent decrees" from the state and federal courts (Pet. App. 19) is somewhat inaccurate. The true "risk" was that the state court would (erroneously) uphold the state law defenses and thereby delay the condemnation of property necessary to the federal court consent decree. But a ruling by a state trial court which disappoints the expectations of a federal court is hardly "inconsistent" with the federal court's authority, particularly where the state trial court ruling could be appealed.

objectivity, [and] integrity of the state court" was conceded. Pet. App. 17. The chance of a good faith legal error by the state court is plainly not "irreparable injury" justifying a "preemptive strike" against that court's jurisdiction. Even if one presumes from the outset that the state trial court will rule incorrectly (an improper presumption), an appeal would be available to correct any errors. *Cf. Younger* v. *Harris*, 401 U.S. 37 (1971).

The second argument, which suggests that the City would not vigorously defend the Article 78 proceeding, has absolutely no factual support. In fact, the pleadings that had been filed at that time evidenced no lack of commitment by the City to proceed in good faith pursuant to its obligations under the Consent Decree. But, even assuming arguendo that the City would "inadequately" press the legal arguments in the Article 78 proceeding, "the United States and/or the NAACP could seek to intervene in the state court proceedings, and it appears likely that such an application would be granted." Pet. App. 40, n.3.

At bottom, the district court took jurisdiction over the Article 78 proceeding because it wanted a convenient and expeditious way to dispose of the defenses to the condemnation proceeding. But there is no evidence in the record that would constitute a showing of irreparable injury sufficient to support the granting of injunctive relief. There certainly is no showing of "exceptional circumstances," such as the "inadequacy" of normal legal processes, necessary to justify the extraordinary relief under the All Writs Act.

2. Despite the error committed in allowing the district court to enjoin "removal" of the Article 78 proceeding on the authority of the All Writs Act, certiorari is not appropriate here. First, the decision is sui generis. The exercise of jurisdiction here does not conflict with

any decision of any other court. Certainly, petitioner does not contend that any such conflict is created. Rather, petitioner, relying upon Judge Mahoney's dissenting opinion (Pet. App. 36-42), argues only that the decision is "based upon a misapplication of a recent decision of this Court . . . *Pennsylvania Bureau of Correction* v. *United States Marshals Service*, 474 U.S. 34 (1985) . . . ." Pet. 10. But, the "correctness" of the decision below, which will only affect the parties to this litigation, does not warrant review by this Court. See *Ross* v. *Moffitt*, 417 U.S. 600, 616-617 (1974).

Second, the parameters of federal court authority under the All Writs Act have been fully outlined by this Court. See, *e.g.*, *Pennsylvania Bureau of Correction*, 474 U.S. 34 (1985); *United States* v. *New York Tel. Co.*, 434 U.S. 159, 172 (1977); *Adams* v. *United States ex rel. McCann*, 317 U.S. 269, 273 (1942). The only question presented here is the fact-bound inquiry whether this case presents an "exceptional circumstance" (and irreparable injury) that would justify the injunction issued under the All Writs Act. That question, even though incorrectly answered below, presents no "important question of federal law" (Rule 17) and provides no basis for this Court to grant certiorari. *United States* v. *Johnston*, 268 U.S. 220, 227 (1925); *Texas* v. *Mead*, 465 U.S. 1041 (1984) (Stevens, J.).

Third, the error below is, in the circumstances of this case, purely a procedural one. Because the district court clearly was correct in its ultimate conclusion that the City should prevail in the condemnation proceedings, any reversal now would merely delay the ultimate implementation of the district court's remedial orders. In fact, the state court has now granted the City's condemnation petition and, absent any further intervention, title to the property soon will be transferred to the City.

3. Apart from the question of jurisdiction, the only other question presented is whether the "Court of Appeals dismiss[ed] the defenses to the proceeding upon grounds contrary to applicable state law?" Pet. i. As petitioner clearly concedes (Pet. 16-19), resolution of that question turns on "important issues of *state* law" (Pet. 20 (emphasis added)) involving the interpretation of New York eminent domain and environmental statutes. See *supra* 5-6, 8-9. Regardless of how "important" those issues are, this Court will not undertake to review judgments that rest solely upon an interpretation of state law. See *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945).[11]

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[11] This Court "ordinarily . . . accept[s] and therefore do[es] not review, save in exceptional cases, the considered determination of questions of state law by the intermediate federal appellate courts." *Huddleston* v. *Dwyer*, 322 U.S. 232, 237 (1944). Indeed, the Court generally defers to the views of a court of appeals as an expert on the laws of the states within its circuit. *See Butner* v. *United States*, 440 U.S. 48, 57-58 (1979); *Brockett* v. *Spokane Arcades, Inc.*, 472 U.S. 491, 499 (1985). In this case, the decision on state law issues clearly is correct (*see Yonkers Racing Corporation* v. *City of Yonkers*, Nos. 88-6140, 88-6146, Consolidated Brief of City of Yonkers, 10-23 (July 12, 1988)), and there is no reason for this Court to undertake to review that holding.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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